

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

EXPRESS LATINO, INC.

Employer

And

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS, AFL-CIO

Case 13-RC-21127

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held December 16, 2003, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine the manner in which the election should be conducted.¹

I. ISSUE

The sole issue in the instant case is the manner in which the election should be conducted. The Petitioner takes the position that the election should be conducted by mail balloting. The Employer, on the other hand, takes the position that appropriate arrangements can be made for manual balloting.

II. DECISION

The manner of conducting an election is an administrative matter left to the discretion of the undersigned after having directed an election. The undersigned will give appropriate notice

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organizations involved claim to represent certain employees of the Employers.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

to the parties of the time, place, and manner in which an election will be conducted in the following unit:

All full-time and regular part-time bus drivers employed by Express Latino at O'Hare International Airport operations, excluding clerical employees, guards and supervisors as defined in the Act.

III. DISCUSSION

A. Facts:

The Employer is a corporation engaged in transporting travelers by bus throughout O'Hare Airport. The unit found appropriate is in keeping with the parties' stipulation.

The Petitioner asserts that a mail ballot election is necessary because the stipulated unit of approximately 23 employees work on numerous and various shifts at remote locations. The Employer does not dispute these facts but suggested that the Board or Petitioner provide some sort of truck in which to hold an election in the airport parking lot. The Petitioner argues that because it is the middle of winter, there is no guarantee that weather conditions would not make such a setup both unsafe and a discouraging environment for the employees to vote.

B. Analysis:

The time, place, and manner of conducting an election is an administrative matter left to the discretion of the undersigned to determine after having directed an election. *Odebrecht Contractors of Florida, Inc.*, 326 NLRB 33 (1998); *North American Plastics Corporation*, 326 NLRB 835 (1998). "The Board has held that a Regional Director has broad discretion in arranging the details of the election, including, in appropriate instances, determination as to whether to conduct the election in whole or in part by mail ballot" *Harold F. Gross d/b/a Southwestern Michigan Broadcasting Company*, 94 NLRB 30, 31 (1951). See also, *Halliburton Services*, 265 NLRB 1154 (1982).

Accordingly, after the issuance of the instant Decision and Direction of Election, the undersigned will administratively determine the manner of conducting the election, taking into consideration the positions of the parties and the guidelines of the Board as set forth in *San Diego Gas & Electric*, 325 NLRB 1143 (1998).

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status, as strikers but who have been

permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Association of Machinists & Aerospace Workers, AFL-CIO or no labor organization.

IV. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

V. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of the issuance this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 800, 200 West Adams Street, Chicago, Illinois 60606 on or before December 31, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by January 7th 2004.

DATED at Chicago, Illinois this 24th day of December 2003.

Harvey A. Roth, Acting Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, Illinois 60606